



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Release Number: **201335014**

Release Date: 8/30/2013

Date: June 5, 2013

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

501.00-00, 501.03-02, 501.03-03, 4943.00-00

Legend:

Date1 =

Date2 =

Date3 =

Decedent =

This is in response to your ruling request, dated December 2, 2010, requesting an extension for an additional five years, as provided in § 4943(c)(7) of the Internal Revenue Code (I.R.C.), within which to dispose of certain excess business holdings.

Facts:

You are a revocable charitable trust that has been recognized as exempt from federal income tax under § 501(c)(3) and classified as a private foundation under § 509(a). You received a distribution of stock from Decedent's estate on Date1. The stock consisted of 80 percent of the outstanding shares of eleven corporations (the "Companies") organized and operating in several states (the "Stock"). The remaining stock in the Companies was bequeathed to your sole trustee who is also the executrix, in her personal capacity. All of the stock has equal voting rights.

As a result of the distribution of Stock, you represent that your ownership interest in Companies constitutes excess business holdings under § 4943(c)(1). Your initial five-year period for disposing of excess business holdings ends on Date2.

You describe the Companies as an unusual mix of various health care and health care staffing businesses operating in several states. You determined that the sale of all of the Companies to a single purchaser would maximize the selling price and had independent valuations of the Companies conducted. The Companies expended substantial effort to respond to the appraiser's due diligence requests for documents and information. The First Appraiser delivered its report 15 months after Date1 (the "Appraisal Period").

During the Appraisal Period, you concluded that revenue and salability would be substantially increased by changing the Companies operational and marketing strategies. These changes nearly tripled aggregate net income in the second year after Date1 but revenue began to decline in the third year. Net income doubled the first year, tripled second year, and in the third year fell by one-third. Fourth year gross revenues fell to almost the first year amount. Fourth year

aggregate net income of the Companies was a large loss. You attribute much of the third and fourth year declines to the national economic downturn. You deferred interviewing investment banking firms until two years after Date1, which was about seven months after the end of the Appraisal Period, to allow time for the new strategies to impact the bottom line and time for completion of the financial reports for the year, which was necessary to market the Companies.

You have agreed to sell Companies to employees. Stock for one of the Companies will be transferred to one employee stock ownership plan, and the stock for the remaining Companies transferred to a second employee stock ownership plan. Together, these transfers are the "ESOP Sales." The ESOP Sales are subject to the various states' approval and obtaining required purchaser licenses.

Two of the states in which a company is located had imposed an 18 month moratorium on license approvals while its legislature reorganized its licensing procedures. One of the moratoriums was lifted and a new licensing scheme became effective one month prior to the expiration of the initial five-year period. However, the delays due to the moratoriums and resulting new licensing scheme further depresses the market for the Companies.

You have represented that the employees of the purchasing ESOPs, other than your trustee who owns 20 percent of the Stock, are not disqualified persons with respect to you within meaning of § 4946.

You submitted this disposition plan to the appropriate state Attorney General prior to submission of this ruling request. The Attorney General has acknowledged receipt of the plan. If and when a response is received from the Attorney General, you state that you will submit a copy to the Internal Revenue Service (the Service) in accordance with § 4943(c)(7)(B)(ii).

Before the end of the initial five-year period for disposing of excess business holdings under § 4943(c)(6), you submitted a request to the Service for an extension of five years to Date3 to complete the required disposition.

Ruling Requested:

That pursuant to § 4943(c)(7) you are granted a five-year extension of the five-year period that would end on Date2 in which it must dispose of the stock that was originally acquired by bequest on Date1 and constitutes excess business holdings under § 4943.

Law:

I.R.C. § 4943(a)(1) imposes an excise tax on the excess business holdings of any private foundation in a business enterprise.

I.R.C. § 4943(c)(1) provides that the term "excess business holdings" means, with respect to the holdings of any private foundation in any business enterprise, the amount of stock or other interest in the enterprise which the foundation would have to dispose of to a person other than a disqualified person in order for the remaining holdings of the foundation in such enterprise to be permitted holdings.

I.R.C. § 4943(c)(6) provides, in pertinent part that, if there is a change in the holdings in a business enterprise which causes the private foundation to have—

(A) excess business holdings in such enterprise, the interest of the foundation in such enterprise (immediately after such change) shall (while held by the foundation) be treated as held by a disqualified person (rather than by the foundation) during the 5-year period beginning on the date of such change in holdings, or

(B) an increase in excess business holdings in such enterprise (determined without regard to subparagraph (A)), subparagraph (A) shall apply, except that the excess holdings immediately preceding the increase therein shall not be treated, solely because of such increase, as held by a disqualified person (rather than by the foundation).

I.R.C. § 4943(c)(7) provides that the Service may extend the § 4943(c)(6) period to dispose of excess business holdings for an additional five years where there is a large gift or bequest of diverse business holdings or holdings with complex corporate structures if:

(A) the foundation establishes that (i) diligent efforts to dispose of such holdings have been made within the § 4943(c)(6) period, and (ii) disposition within the § 4943(c)(6) period has not been possible (except at a price substantially below fair market value) by reason of such size and complexity or diversity of such holdings;

(B) before the close of the § 4943(c)(6) period (i) the private foundation submits to the Secretary a plan for disposing of all of the excess business holdings involved in the extension, and (ii) the private foundation submits the plan described in clause (i) to the Attorney General (or appropriate State official) and submits to the Secretary any response received by the private foundation from the Attorney General (or appropriate State official) to such plan during the § 4943(c)(6) period; and

(C) the Secretary determines that such plan reasonably can be expected to be carried out before the close of the extension period.

Treas. Reg. § 53.4943-6(b)(1) provides that in the case of an acquisition of holdings in a business enterprise by a private foundation pursuant to the terms of a will or trust, the § 4943(c)(6) period in this section shall not commence until the date on which the distribution of such holdings from the estate or trust to the foundation occurs. See § 53.4943-5(b)(1) for rules relating to the determination of the date of distribution pursuant to the terms of a will or trust.

Analysis:

You have stipulated that you are subject to § 4943(a) which generally imposes a ten percent excise tax on the value of excess business holdings of any private foundation in a business enterprise during any taxable year which ends during the taxable period. Generally, under § 4943(c)(2)(A), a private foundation is permitted to hold 20 percent of the voting stock in a business enterprise with any excess constituting excess business holdings. However, if, as is the case here, a private foundation acquires holdings in a business enterprise other than by

purchase (e.g. by bequest from a will) which causes the foundation to have excess business holdings, then the interest of the foundation in such business enterprise shall be treated as held by a disqualified person (rather than the foundation) for a five-year period beginning on the date such holdings were acquired by the foundation under § 4943(c)(6)(A).

Under § 4943(c)(7), however, the Service may extend the initial five-year period for disposing of excess business holdings for an additional five years (the "Extension Period") if the private foundation establishes that: (i) it made diligent efforts to dispose of its holdings within the initial five-year period but were unable to do so because of the size and complexity of such holdings, (ii) it submitted a plan for disposing of all excess business holdings in the five-year extension period and submitted such plan to the state Attorney General, and (iii) the Service determines that such plan can reasonably be expected to be carried out before the close of the extension period.

Stock in the Companies was distributed to you on Date1 starting the initial five-year period under § 4943(c)(6)(A). During the first two years, Trustee engaged in a variety of activities for the marketing and sale of the Companies, eventually pursuing a strategy of ESOP Sales. The licensing moratoriums prevented the disposition of the Stock during the last two years of the initial five-year period. You and the ESOPs have taken steps to advance the ESOP Sales. Accordingly, we conclude that you have made diligent efforts to dispose of the Stock within the initial five-year period as required by § 4943(c)(7)(A)(i).

Section 4943(c)(7)(A)(ii) also requires that disposition within initial five-year period has not been possible (except at a price substantially below fair market value) by reason of such size and complexity or diversity of such holdings. In the aggregate the Companies operate in five states, providing differing mixes of health care services, each company targeted to narrow geographical markets, serving a variety of entities and individuals, with a variety of health care payors. They are subject to numerous county, state, and federal regulatory authorities, two of which imposed moratoriums on licensing. While all of the Companies have in common the provision of health care services, they operate in different geographical markets, different counties within different states, and in a highly regulated industry subject to many regulatory authorities with overlapping jurisdictions. The moratoriums on licensing created such regulatory risk that no rational buyer would consummate a sale without a steep discount from otherwise fair market value. Importantly, the moratoriums were temporary distortions of the market for sale of the Companies. Accordingly, we conclude that that disposition within initial five-year period has not been possible (except at a price substantially below fair market value) because in the aggregate the Companies constitute jurisdictionally diverse business holdings.

Section 4943(c)(7)(B) requires that before the close of the initial five-year period: (i) the private foundation submits to the Secretary a plan for disposing of all of the excess business holdings involved in the Extension Period, and (ii) the private foundation submits such plan to the Attorney General (or other appropriate State official) having administrative or supervisory authority or responsibility with respect to the foundation's disposition of the excess business holdings involved and submits to the Secretary any response received by the private foundation from the Attorney General (or other appropriate State official) to such plan during the initial five-year period. You filed this request for private letter ruling prior to Date2. The ruling request includes the draft transaction documents for the ESOP Sales and your representation that your

plan has been submitted to the State Attorney General. You represented that Attorney General has not notified you of any opposition to your plan. Accordingly, you have satisfied the requirements of § 4943(c)(7)(B).

The final requirement under § 4943(c)(7)(C) requires that your plan for disposition can reasonably be expected to be carried out before the close of the additional five-year extension period. You state that buyer's due diligence and transaction documents are substantially complete. The sole extraordinary obstacle to closing is two states' approval of the buyers' application for licenses. You have represented that the buyers are using their best efforts to obtain the necessary State licenses. Accordingly, the ESOP Sales can be reasonably expected to be carried out before the close of the Extension Period.

Thus, based on the information submitted, we have determined that your plan to dispose of all of your holdings in Companies within an additional five-year period can reasonably be expected to be carried out. Therefore, we conclude that you meet the requirements under section 4943(c)(7) for an extension of five years to dispose of Companies.

Ruling:

Based on the foregoing, we rule as follows:

That pursuant to § 4943(c)(7), you are granted a five-year extension to Date3 of the initial five-year period that would end on Date2 in which to dispose of the Stock that was originally acquired by bequest on Date1 and constitutes excess business holdings under § 4943.

This ruling will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, Notice of Intention to Disclose. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

This ruling is based on the facts as they were presented and on the understanding that there will be no material changes in these facts. This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described. Because it could help resolve questions concerning your federal income tax status, this ruling should be kept in your permanent records.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

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In accordance with the Power of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Theodore R. Lieber
Manager, Exempt Organizations
Technical Group 3

Enclosure
Notice 437